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Supreme Court of the United States

OCTOBER TERM, 1939.

No. [redacted] 32

FIDELITY UNION TRUST COMPANY and MINTON H. TWINCH, as Executors of the Last Will and Testament of Edith M. Peck, deceased,

Petitioners,

vs.

ETHEL ADELAIDE FIELD,

Respondent.

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND SUPPORTING BRIEF.

FRANCIS F. WELSH,
WALLACE R. CHANDLER, Jr.,
HOOD, LAFFERTY & CAMPBELL,
Solicitors of Petitioners.

FRANCIS F. WELSH,
Of Counsel with Petitioners.

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Supreme Court of the United States

No..... October Term, 1939.

Fidelity Union Trust Company and Minton H. Twinch, as Executors of the Last Will and Testament of Edith M. Peck, deceased,
Petitioners,
vs.
Ethel Adelaide Field,
Respondent.

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Fidelity Union Trust Company and Minton H. Twinch, as Executors of the Last Will and Testament of Edith M. Peck, deceased, respectfully show:

A.

Summary Statement of the Matter Involved.

The question involved in this case is whether the established decisions of the Court of Chancery of the State of New Jersey, construing the statute law of that State relating to the status of savings bank accounts created in that State and designated in the name of the creator thereof in

trust for another, shall be binding on the Courts of the United States in actions brought in said courts on such accounts.

Edith M. Peck on January 2, 1935 and prior to her death, caused the title of a certain savings bank account (the subject matter of this cause), standing in her name alone, to be transferred upon the records of the savings bank in the City of Newark, New Jersey, to the designation of "Edith M. Peck, in trust for Ethel Adelaide Field" (R. 19) retaining exclusive control over said account with the sole right of withdrawal therefrom, redesignation thereof and right of revocation of any previous disposition (R. 20) and gave no further notice of the existence of or terms of any trust affecting said account (R. 13) and created no other form of alleged trust.

The said Edith M. Peck subsequently died on January 6th, 1935, a resident and citizen of the City of Newark, County of Essex and State of New Jersey, leaving a last will and testament, duly admitted for probate before the Surrogate of said County and State on January 18th, 1935, whereby these petitioners were appointed executors and duly qualified as such. No mention was made in the aforesaid will of the aforesaid savings account nor was the respondent named as a beneficiary therein (R. 27).

Subsequent to the institution of the suit below, the savings bank, which had been named a defendant therein, pursuant to order of the District Court of the United States for the District of New Jersey, caused to be paid into said Court the sum of $4,230.66, being the balance of the said account and upon such payment, was dismissed as a party defendant to the said suit (R. 27).

The said District Court found for these petitioners (R. 24) concluding:

1. That under the law of the State of New Jersey, the designation of the bank account "Edith M. Peck, in trust for Ethel Adelaide Field" did not create a trust in fact.

2. That the designation of the said bank account as aforesaid was in effect testamentary in character and as such did not comply with the statute of wills of the State of New Jersey.

3. That Edith M. Peck did not make a valid gift of the said bank account to the comp' inant, Ethel Adelaide Field.

4. That the complainant, Ethel Adelaide Field, has no right, title or interest in and to the proceeds of said bank account deposited with this Court.

5. That the defendants, Fidelity Union Trust Company and Minton H. Twinch, are entitled to a judgment directing that the amount of said fund deposited in this Court, less lawful disbursements, be paid to them as executors under the last will and testament of Edith M. Peck, deceased.

On December 29, 1938, in conformity with the above conclusions, a judgment was entered by the United States District Court decreeing that the sum of $4,230.66 be paid to the petitioners herein (R. 25).

The respondent (plaintiff below) appealed the judgment of the said District Court to the United States Circuit Court of Appeals for the Third Circuit and said last mentioned Court reversed the judgment of the said District Court on the grounds that the Legislature of New Jersey (Chapter 40, p. 59, P. L. 1932, the full text of which is set

forth in the appendix following the supporting brief hereto) validated the so-called "*tentative trust*" and entitled the beneficiary, in trust for whom the deposit was made, to the funds so deposited upon the death of the creator and in so holding the said Court refused to be bound by or to follow the decisions of the Court of Chancery of the State of New Jersey (*Thatcher* v. *Trenton Trust Co.*, 119 N. J. Eq. 408, 182 Atl. 912, and *Travers* v. *Reid*, 119 N. J. Eq. 416, 182 Atl. 908) in construing such statute to be ineffectual to create such rights in such a beneficiary.

The Order of the Circuit Court of Appeals for the Third Circuit reversing the judgment of the United States District Court for the District of New Jersey was entered on December 20, 1939.

B.

Jurisdiction.

1. The date of the judgment of the Circuit Court of Appeals for the Third Circuit to be reviewed was December 20, 1939.

2. The petitioners claim (R. 9, 10 and 11) that, under and by virtue of the local law of the State of New Jersey, the petitioners are entitled to the entire balance of the bank account standing in the name of the decedent and designated "Edith M. Peck, in trust for Ethel Adelaide Field". Respondent asserts that she is the beneficiary named in said bank account and as such became entitled to the same upon the death of Miss Peck.

3. The jurisdiction of the court to issue the writ of *certiorari* herein prayed for is invoked under Judicial Code,

Section 240 (a) as amended by the Act of February 13, 1925, 43 Stat. 938 (U. S. C. Title 28, Section 347).

4. Petitions for writs of *certiorari* to review decisions of the Circuit Court of Appeals for the Third Circuit which have failed to follow the local law of a state have been heretofore granted by this Court. *Erie R. R. Co.* v. *Hilt*, 247 U. S. 97, (1918); *Erie R. R. Co.* v. *Duplak*, 286 U. S. 440.

C.

Reasons relied on for the allowance of the Writ.

1. The decision of the Circuit Court of Appeals for the Third Circuit, construing Chapters 40 and 41 of the New Jersey Laws of 1932, now revised in Revision of 1937 (the complete text of said statutes and the revision thereof being set forth in the appendix following the supporting brief hereto), and holding that, under said statutes, the so-called beneficiary, Ethel Adelaide Field, was entitled, upon the death of the creator of the deposit, to the deposit made by the depositor during her lifetime in trust for such beneficiary, notwithstanding the reservation of complete control over the same by the depositor, is in direct conflict with local decisions of the Courts of New Jersey construing the same statute under parallel facts, to wit: decisions by the Court of Chancery reported in *Thatcher* v. *Trenton Trust Company*, 119 N. J. Eq. 408; *Travers* v. *Reid*, 119 N. J. Eq. 416; and the effect of such decision presents an important question of local law of the State of New Jersey, in so far as it affects numerous bank accounts in this State similar to the one in the instant case.

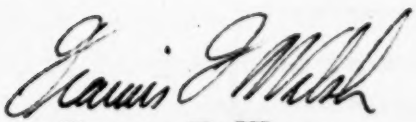
2. The decision of the Circuit Court of Appeals for the Third Circuit in refusing to be bound by or to follow the decisions of the Court of Chancery of New Jersey, is in conflict with Section 34 of the Judiciary Act of 1789, now found in the Judicial Act in 28 U. S. C., Section 725, as construed by the case of *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64.

3. The decision of the Circuit Court of Appeals for the Third Circuit, in refusing to follow the decision of the Court of Chancery of New Jersey is in conflict with the decision of the United States Supreme Court in the case of *Erie Railroad Co.* v. *Hilt*, 247 U. S. 97, which reversed the Circuit Court of Appeals for the Third Circuit, which refused to follow a decision of the Supreme Court of New Jersey (*Barcolini* v. *Atlantic City and Shore Railroad Co.*, 82 N. J. L. 107) construing a New Jersey statute. As will appear in our following brief, the Supreme Court of New Jersey and the Court of Chancery are neither courts of last resort, but are of equal importance in the New Jersey judicial system.

WHEREFORE, your petitioners respectfully pray that a writ of *certiorari* be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the Third Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the judgment of the United States District Court for the District of New Jersey be affirmed by this Honorable Court, and that the order of the United States Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court, and your petitioners have such other and fur-

ther relief in the premises as to this Honorable Court may seem just and meet.

FRANCIS F. WELSH,
WALLACE R. CHANDLER, JR.,
HOOD, LAFFERTY & CAMPBELL,
Solicitors of Petitioners.



FRANCIS F. WELSH,
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Supreme Court of the United States

OCTOBER TERM, 1939. No.....

FIDELITY UNION TRUST COMPANY and MINTON H. TWINCH, as Executors of the Last Will and Testament of Edith M. Peck, deceased,
Petitioners,
vs.
ETHEL ADELAIDE FIELD,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI.*

I.

Opinions of the Courts below.

The Findings of Fact and Conclusions of Law and Judgment of the District Court were rendered December 29, 1938, and will be found in the Transcript of Record, at pages 23, 24 and 25. There was no accompanying opinion. The opinion of the Circuit Court of Appeals for the Third Circuit was rendered December 20, 1939, and was reported under the title of "*Field* v. *Fidelity Union Trust Company, et al.*" in 108 Fed. 2d, 521, and is set forth in full in the record.

II.

Statement of the Case.

A full statement of the case has heretofore been given under heading A in the petition, and in the interest of brevity the statement will not be repeated in the brief.

III.

Specification of Errors.

The specification of errors is substantially the same as the reasons of the petitioners for the allowance of the writ annexed to the petition and may be condensed as follows:

A. The Circuit Court of Appeals for the Third Circuit erred in finding and holding that the law of the State of New Jersey is the law expressed in the statute of that State as construed by said Court, and that it is not bound to follow decisions of the Court of Chancery of New Jersey in construing said statute.

B. The Circuit Court of Appeals for the Third Circuit erred in finding and holding that under the local law of the State of New Jersey the bank account designated "Edith M. Peck in trust for Ethel Adelaide Field" was in fact a valid trust for the benefit of the beneficiary named therein.

C. The Circuit Court of Appeals for the Third Circuit erred in substituting its construction of the statute in question for that construction adopted by the Court of Chancery of New Jersey.

D. The decision of the Circuit Court of Appeals for the Third Circuit, in refusing to follow the decisions of the Court of Chancery of New Jersey, is in conflict with that section of the Judiciary Act hitherto cited, as construed by the cases of *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, and *Ruhlin* v. *New York Life Insurance Co.*, 304 U. S. 202.

E. The decision of the Circuit Court of Appeals for the Third Circuit, in refusing to follow the decisions of the Court of Chancery of New Jersey, is in conflict with a prior decision of this Court as set forth in the third reason relied upon for the allowance of the writ.

IV.

ARGUMENT.

Summary of the Argument.

POINT A—Under the local law of New Jersey, as established by the Courts prior to 1932, the mere designation of a bank account in trust for another without more confers no rights upon the beneficiary so named.

POINT B.—The 1932 statute of New Jersey did not have the effect of conferring any additional rights upon such a beneficiary.

POINT C—The construction placed by the Court of Chancery of New Jersey upon statutes of that State should be followed by the Courts of the United States.

POINT A.

Under the local law of New Jersey, as established by the Courts prior to 1932, the mere designation of a bank account in trust for another without more confers no rights upon the beneficiary so named.

In New Jersey, the creation of a so-called "tentative trust", which consists of a deposit made by A in trust for B, creates no rights in the beneficiary where the donor or depositor still exercises complete domination or control over the gift. *Stevenson* v. *Earl,* 65 N. J. Eq. 721, Atl. 1091 (E. & A. 1903); *Nicklas* v. *Parker,* 69 N. J. Eq. 743, 61 Atl. 267 (Ch. 1905); *Johnson* v. *Savings Investment & Trust Co. of East Orange, et al.,* 107 N. J. Eq. 547, 153 Atl. 383 (Ch. 1931, aff'd. 110 N. J. Eq. 466, 160 Atl. 371 (E. & A. 1932).

POINT B.

The 1932 statute of New Jersey did not have the effect of conferring any additional rights upon such a beneficiary.

In 1932 Chapters 40, 41, 42 and 43 of the Session Laws were passed by the New Jersey Legislature with reference to deposits in trust. The complete text is found in the appendix at the end hereto, and the same have been condensed by the Revision of 1937 into one inclusive statute, also found in the appendix. Said statutes were considered twice in 1936 by the Court of Chancery of New Jersey in *Thatcher* v. *Trenton Trust Company,* 119 N. J. Eq. 401, 182 Atl. 912 and *Travers* v. *Reid,* 119 N. J. Eq. 416, 182 Atl. 908, and the Court of Chancery in both cases held that the statutes were not applicable. As stated in the majority

opinion of the Circuit Court of Appeals for the Third Circuit in the case *sub judice* "the facts in these two cases cannot be distinguished from those here in question." Both cases held that the statute created no new rights in the so-called beneficiary, and that upon the death of depositor, the deposit vested in the representatives of the estate of the decedent.

POINT C.

The construction placed by the Court of Chancery of New Jersey upon statutes of that State should be followed by the Courts of the United States.

The Supreme Court of the United States, in the case of *Erie Railroad* v. *Tompkins,* 304 U. S. 64, held in construing Section 34 of the Judiciary Act of 1789 (28 U. S. C., Section 725), that it is the law of a state, as declared by the authority of the State, which is binding on a federal court upon a question of local law. This doctrine applies in a suit in equity as well as in actions at law, *Ruhlin* v. *New York Life Insurance Co.,* 304 U. S. 202. The Judiciary Act, *supra,* reads as follows:

> "The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

The decisions of the Court of Chancery heretofore adverted to have not been reversed, overruled or challenged, and the legislature has not sought to amend, change or modify the statutes of 1932, and it accordingly contended

that under the doctrine of the *Tompkins* case, *supra*, the decisions of the Court of Chancery are authoritative in determining the local law.

The Supreme Court of New Jersey, which is a court of no greater importance than the Court of Chancery of that State, as we will hereafter show, in the case of *Barcolini* v. *Atlantic City & Shore Railroad Co.*, 82 N. J. L. 107, construed a New Jersey statute forbidding recovery to a person injured while walking or playing on any railroad. The Circuit Court of Appeals for the Third Circuit refused to follow this decision in the case of *Erie Railroad Co.* v. *Hilt*, 246 Fed. 800, and the Supreme Court of the United States, in the case of *Erie Railroad Co.* v. *Hilt*, 247 U. S. 97, reversed the Circuit Court of Appeals on the ground that the decision of the Supreme Court of New Jersey should be followed by the Courts of the United States, and the Court said:

> "In view of the importance of that tribunal in New Jersey, although not the highest court in the State, we see no reason why it should not be followed by the Courts of the United States, even if we thought its decision more doubtful than we do."

Subsequently, the Supreme Court of the United States, in the case of *Erie Railroad Co.* v. *Duplak*, 286 U. S. 440, reversed the Circuit Court of Appeals for the Third Circuit for failing to follow the ruling of the *Hilt* case and stated that the effect of the Hilt decision was that the construction of a statute by the State Court must be accepted by the Federal Courts.

It is respectfully submitted that the Court of Chancery is of equal importance in the New Jersey judicial structure.

Article VI., Section 1 of the Constitution of New Jersey, provides:

> "The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish as the public good shall require."

Article VI., Section 2 of the New Jersey Constitution fixes the composition of the highest court of the State, the Court of Errors and Appeals, as follows:

> "The court of errors and appeals shall consist of the chancellor, the justices of the supreme court, and six judges, or a major part of them; which judges are to be appointed for six years."

The *Revised Statutes of New Jersey, 1937 Revision, 2:1-3*, provides:

> "The chancellor, when present, shall be the president of the court; in the absence of the chancellor, the chief justice of the supreme court; in the absence of the chief justice, the senior in office of the justices of the supreme court present."

(Hereafter a reference to the Revised Statutes means the statutes as revised by the 1937 revision.)

Article VI., Section 4 of the Constitution fixes the composition of the Court of Chancery as follows:

> "The court of chancery shall consist of a chancellor."

"The chancellor shall be the ordinary or surrogate-general, and judge of the prerogative court."

Revised Statutes 2:2-3, provides:

"There shall be not more than ten vice-chancellors, who shall be counselors at law of at least ten years' standing. They shall be appointed by the chancellor and commissioned by the governor under the great seal of the state. Each vice-chancellor shall hold office for seven years from the date of his commission."

Revised Statutes 2:2-7, provides:

"The chancellor may refer to a vice-chancellor any cause or other matter at any time pending in the court of chancery, including any matter or cause in which the chancellor is interested, to hear the same for the chancellor, report thereon to him and advise what order or decree should be made therein. The chancellor may also, by general rule, provide for the reference to a vice-chancellor of causes, matters and proceedings pending or future."

For the purpose of comparison, the composition and general powers of the Supreme Court are briefly set forth.

Article VI, Section 5 of the Constitution provides:

"The supreme court shall consist of a chief justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two."

"Final judgments in any circuit court may be brought by writ of error into the supreme court, or directly into the court of errors and appeals."

Revised Statutes 2:4-1, provides:

> "*Constitution of court.* The supreme court shall consist of a chief justice and eight associate justices."

The Supreme Court has superintendence of all *inferior* courts, both civil and criminal—*Ludlow* v. *Ex'rs. of Ludlow*, 4 N. J. L. 451; *Whitehead* v. *Gray*, 12 N. J. L. 36 but nowhere is it given superintendence over the Court of Chancery, a court of equal importance.

Appeals from both courts are directed to the Court of Errors and Appeals. *Revised Statutes 2:29-117*, provides:

> "*Persons entitled; orders or decrees appealable.* All persons aggrieved by any order or decree of the court of chancery may appeal therefrom, or any part thereof, to the court of errors and appeals."

Revised Statutes 2:27-350, provides:

> "*Appeals to court of errors and appeals from supreme court.* Appeals from judgments of the supreme court shall be to the court of errors and appeals, except that no appeal shall lie to the court of errors and appeals to reverse a judgment of the supreme court rendered on appeal to that court from the judgment of a circuit court in a contested election case."

The jurisdiction of both the Court of Chancery and the Supreme Court is original and statewide. *Cassatt* v. *First Nat'l. Bk. of West New York* (Supreme Court of N. J.), 9 N. J. Misc. 222, 153 Atl. 337. The equal importance of these two state tribunals is demonstrated by the Court of Errors and Appeals in the case of *Ramsey* v. *Hutchinson*,

117 N. J. L. 222, 187 Atl. 650, in which it stated, (quoting from *Levy* v. *City of Elizabeth*, 81 N. J. L. 643, 80 Atl. 498):

> "Irrespective of the inherent merit of this construction, a ruling uniformly made by the Supreme Court (or the Court of Chancery) over a course of years, should not be set aside by us except for cogent and important reasons."

A brief summary of the foregoing shows that both the Chancellor and the Judges of the Supreme Court form part of the personnel of the Court of Errors and Appeals, the highest court in the State, but the Chancellor is the highest ranking officer in that tribunal. The jurisdiction of both courts is statewide, and while the Court of Chancery has no appellate jurisdiction, the appeals from both courts lie directly in the highest court of the State, which has recognized by judicial statement the importance of the uniform construction made by either court over a course of years.

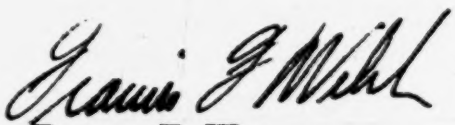
The Vice-Chancellors hear matters on reference from the Chancellor and advise the order or decree to be made. The decree is effective only when entered by the Chancellor.

Inasmuch as the Supreme Court of the United States has held that the Circuit Court of Appeals for the Third Circuit has erred in failing to follow the decisions of the New Jersey Supreme Court in a matter of statutory construction, it is submitted that the Circuit Court of Appeals likewise erred in failing to follow the uniform decisions of the Court of Chancery of New Jersey, a tribunal equal in importance.

The ultimate determination of this matter affects the interests of banks and their depositors throughout the entire state, and it is respectfully submitted that where the decisions of the Court of Chancery construing a State statute have not been challenged for a period of four years, either by other courts in this State, or by the New Jersey Legislature, which has been in regular session each year since that date and has made no attempt to rectify the defects in the 1932 statute, the result of the decision of the Circuit Court of Appeals for the Third Circuit in the case *sub judice* is to effect a discrimination in favor of a nonresident litigant and to create such confusion in the present state of the law as to justify the granting of the petitioner's application for writ of *certiorari*.

Respectfully submitted,

FRANCIS F. WELSH,
WALLACE R. CHANDLER, JR.,
HOOD, LAFFERTY & CAMPBELL,
Solicitors of Petitioners.



FRANCIS F. WELSH,
Of Counsel with Petitioners.

APPENDIX.

Chapter 40, New Jersey Session Laws of 1932.

An Act concerning trust deposits in savings banks, trust companies and banks where other than the deposit in trust no other or further notice is given in writing of the existence and terms of the trust.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever any deposit shall be made with any savings bank, trust company or bank by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the savings bank, trust company or bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the said deposit was made, or to his or her legal representatives and the legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided,* that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee.

2. Whenever any deposit shall have been made with any savings bank, trust company, or bank by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the savings bank, trust company or bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or inter-

est thereon shall be paid to the person in trust for whom the said deposit was made, or to his or her legal representatives and the legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided,* that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee.

3. If any part of this act is held to be unconstitutional it shall not affect the validity of the remainder thereof.

4. This act shall take effect immediately.

Approved March 28, 1932.

Chapter 41, New Jersey Session Laws of 1932.

An Act to amend an act entitled "An act concerning savings banks," approved May second, one thousand nine hundred and six.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section twenty-six of the act of which this act is an amendment is hereby amended to read as follows:

26. When a deposit shall be made by or in the name of any person being a minor, or a female being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such depositor, and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, together with the dividends or interest thereon, to the person in whose name the deposit shall have been made, and the receipt or acquit-

tance of such minor or female shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the bank; *provided,* no minor shall withdraw any deposit in such minor's name from any account in which the first deposit was actually made by any person other than such minor, without the consent in writing of the person actually making such deposit, or his legal representative, if any, and if none, without the written consent of the natural or legal guardian of such minor.

Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the said deposit was made or to his or her legal representatives, and the legal representatives of the deceased trustees shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided,* that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee.

Whenever any deposit shall have been made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the said deposit was made, or to his or her legal representatives and the legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided,* that the person for

whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee.

2. If any part of this act is held to be unconstitutional it shall not affect the validity of the remainder thereof.

3. This act shall take effect immediately.

Approved March 28, 1932.

Chapter 42, New Jersey Session Laws of 1932.

A Supplement to "An act concerning banks and banking" (Revision of 1899), approved March twenty-fourth, one thousand eight hundred and ninety-nine.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the said deposit was made, or to his or her legal representatives and the legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided,* that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee.

2. Whenever any deposit shall have been made by any person in trust for another, and no other or further notice

of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the said deposit was made, or to his or her legal representatives and the legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided*, that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee.

3. If any part of this act is held to be unconstitutional it shall not affect the validity of the remainder thereof.

4. This act shall take effect immediately.

Approved March 28, 1932.

Chapter 43, New Jersey Session Laws of 1932.

An Act to amend an act entitled "A supplement to 'An act concerning trust companies,' (Revision of 1899), approved April eighth, one thousand nine hundred and three."

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the trust company, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the said deposit was

made, or to his or her legal representatives and the legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided,* that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee.

2. Whenever any deposit shall have been made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the trust company, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the said deposit was made, or to his or her legal representatives and the legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided,* that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee.

3. If any part of this act is held to be unconstitutional it shall not affect the validity of the remainder thereof.

4. This act shall take effect immediately.

Approved March 28, 1932.

The four statutes (Chapters 40, 41, 42 and 43 of the Laws of 1932) immediately preceding, were condensed by the 1937 Revision into one statute (17:9-4), which reads as follows:

"*Deposits in trust in banks, savings banks or trust companies.* When a deposit has been or shall be made in a

bank, savings bank or trust company by a person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust has been given in writing to the bank, savings bank or trust company, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the deposit was made, or to his legal representative and the legal representative of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee. If the person for whom the deposit was made is a minor, he shall not draw the deposit during his minority without the written consent of the legal representative of the trustee."